



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

JUN 14 2006

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brian Harris
Heart Six Guest Ranch
P.O. Box 70
Moran, WY 83013

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. SDWA-08-2006-0045

Dear Mr. Harris:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against you under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C section 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that you failed to comply with an Amended Administrative Order, Docket No. PWS-VIII-98-55, issued on April 29, 1999, under section 1414(g) of the SDWA, 42 U.S.C. section 300g-3(g). The violations are specifically set out in the complaint.

By law, you have the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If you do not respond to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you and/or your attorney may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance of a consent agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated therein.



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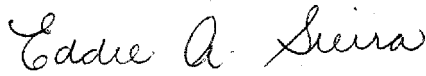
Brian Harris / Heart Six Guest Ranch
Page 2 of 2

A request for an informal conference does not extend the 30-day period during which you must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous with, the adjudicatory hearing.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6467, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,

for 
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: WY DEQ (via email)
WY DOH (via email)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2006 JUN 14 PM 12:35

IN THE MATTER OF)

Brian Harris)

Heart Six Guest Ranch)

P.O. Box 70)

Moran, Wyoming 83013)

Respondent)

Proceedings under section 1414(g))

of the Safe Drinking Water Act,)

42 U.S.C. § 300g-3(g))

**COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR
HEARING**

Docket No. SDWA-08-2006- 0045

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing ("complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 1414(g)(3) of the Safe Drinking Water Act, as amended ("SDWA"), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

The complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. ("Consolidated Rules of Practice")(Complainant's Exhibit 1).

GENERAL ALLEGATIONS

Each allegation in this complaint has applied at all relevant times unless otherwise stated.

1. Respondent Brian Harris is an individual and therefore a "person" as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. The Respondent owns and/or operates a system, the Heart Six Guest Ranch water system ("System"), located in Teton County, Wyoming, for the provision to the public of piped water for human consumption.
3. The System regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" as that term is defined in section 1401(6) of the SDWA, 42 U.S.C. § 300f(16), and a "non-community water system" as that term is defined in section 1401(15) of the SDWA, 42 U.S.C. § 300f(15) and 40 C.F.R. § 141.2.
4. As an owner and/or operator of the System, the Respondent is a "supplier of water" as defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. The Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and its implementing regulations, the National Primary Drinking Water Regulations ("NPDWRs"), 40 C.F.R. part 141.
5. The source of the System's water is a well, which has operated since 1995.
6. The System serves an average of 40 persons daily through 16 service connections.
7. On April 29, 1999, EPA issued an Amended Administrative Order (the "Order") to the Respondent pursuant to section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), citing violations of the NPDWRs. A copy of the Order (Docket No. PWS-

VIII-98-55) is attached to this complaint and incorporated herein (Complainant's Exhibit 2). The effective date of the Order was April 29, 1999. The Order required the Respondent, among other things, to achieve compliance with certain NPDWRs, in accordance with specified deadlines.

8. By letter dated July 27, 1999, EPA notified the Respondent that he had violated the Order by (1) failing to submit a sample siting plan by the deadline specified in the 1999 Order and (2) failing to provide public notice of certain NPDWR violations. (Complainant's Exhibit 3.)
9. By letter dated December 21, 2004, EPA notified the Respondent that he had violated the Order by (1) failing to perform quarterly bacteriological monitoring and (2) failing to report analytical results to EPA within the first ten days of the end of the monitoring period, and (3) failing to report to EPA his noncompliance with the bacteriological monitoring requirements. (Complainant's Exhibit 4.)
10. On June 8, 2005, EPA issued the Respondent (and two other persons) an additional administrative order under section 1414(g) of the SDWA, citing additional violations of the NPDWRs. The cover letter for that order specifically noted that the Amended Administrative Order, Docket No. PWS-VIII-98-55 "remains open and is still effective."

SPECIFIC ALLEGATIONS

Count I

Failure to Monitor Quarterly for Total Coliform Bacteria

11. According to 40 C.F.R. § 141.21(a)(3)(i), the Respondent is required to monitor the System's water for total coliform bacteria each quarter.
12. Page 5 of the Order, in paragraph 1 of the "Order" section, required the Respondent to comply with the requirement of 40 C.F.R. § 141.21(a)(3)(i) to perform quarterly bacteriological monitoring.
13. The Respondent failed to perform quarterly bacteriological monitoring for the fourth quarter of 2005, in violation of the Order and 40 C.F.R. § 141.21(a)(3)(i).

Count II

Late Reporting of Results of Bacteriological Monitoring

14. According to 40 C.F.R. § 141.31(a), the Respondent is required to report analytical results of bacteriological monitoring to EPA within the first 10 days of the end of the monitoring period.
15. Page 5 of the Order, in paragraph 1 of the "Order" section, required the Respondent to report analytical results of quarterly bacteriological monitoring to EPA within the first ten days of the end of the monitoring period.
16. For the analytical results of bacteriological monitoring in the third quarters of 1999 and 2000, the Respondent failed to report to EPA within ten days of the end of the monitoring period, in violation of the Order and 40 C.F.R. § 141.31(a). The Respondent subsequently reported these results.
17. For the analytical results of bacteriological monitoring in the second quarter of 2002, the Respondent failed to report to EPA within ten days of the end of the

monitoring period, in violation of the Order and 40 C.F.R. § 141.31(a). The Respondent later reported this result, on April 8, 2003.

Count III
Late Submission of Sample Siting Plan

18. According to 40 C.F.R. § 141.21(a), public water systems must have a written total coliform sample siting plan.
19. Pages 5 and 6 of the Order, in paragraph 3 of the "Order" section, required the Respondent to submit a total coliform sample siting plan to EPA no later than May 30, 1999.
20. The Respondent did not submit a sample siting plan to EPA until August 16, 1999, in violation of the Order.

Count IV
**Failure to Report Noncompliance
with NPDWRs to EPA**

21. According to 40 C.F.R. § 141.21(g)(2), each public water system must report any failure to comply with a coliform monitoring requirement to EPA within ten days after the system discovers the violation.
22. Page 6 of the Order, in paragraph 4 of the "Order" section, required Respondent to comply with 40 C.F.R. § 141.21(g)(2) by reporting to EPA within ten days of any failure to comply with any coliform monitoring requirement.
23. Respondent failed to report to EPA his failure to monitor for total coliform in the fourth quarter of 2005, in violation of the Order and the NPDWRs.

Count V
Late Submission of Public Notice Information to EPA

24. According to 40 C.F.R. § 141.32, as in effect as of the date of the Order, the Respondent was required to provide public notice of his violations of the NPDWRs. According to 40 C.F.R. § 141.31(d), as in effect as of the date of the Order, the Respondent was required to provide EPA with a copy of that public notice no later than ten days after completing the public notice.
25. Pages 6 and 7 of the Order, in paragraph 5 of the "Order" section, required the Respondent to provide a public notice for the violations specified in the Order no later than April 14, 1999 and, no later than ten days after the period of providing public notice, to submit a copy of the public notice to EPA.
26. Respondent did not provide EPA with a copy of his public notice of the violations cited in the Order until August 16, 1999, in violation of the Order and 40 C.F.R. § 141.31(d).

PROPOSED ADMINISTRATIVE CIVIL PENALTY

Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to assess an administrative civil penalty of up to \$27,500¹ for violation of an administrative order issued under section 1414(g)(1) of the SDWA. EPA is now proposing that Respondent pay an administrative penalty for those violations that occurred within the five years preceding this complaint.

¹The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.

EPA has determined the proposed penalty amount in accordance with section 1414 of the SDWA, 42 U.S.C. § 300g-3. Taking into account the seriousness of the violation, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to EPA at this time. EPA proposes to assess an administrative civil penalty of \$1,200 against Respondent for his violations of the Order.

OPPORTUNITY TO REQUEST A HEARING

As provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), the Respondent has the right to request a public hearing to contest any material fact alleged in this complaint, to contest the appropriateness of the proposed penalty and/or to assert that he is entitled to judgment as a matter of law.

If Respondent wishes to request a hearing, the Respondent must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, the Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file his answer.

If Respondent requests a hearing in his answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, Respondent has the right under the SDWA to elect a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. ("APA"). To exercise this right, the answer must include a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.)

Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

Any answer must be in writing. An original and one copy of the answer must be sent to the attorney listed below and the EPA Regional Hearing Clerk at the address below:

Tina Artemis
Region 8 Hearing Clerk (8RC)
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, Colorado 80202-2466

FAILURE TO FILE AN ANSWER

To avoid entry of a default order against Respondent pursuant to 40 C.F.R. § 22.17 for the full amount of the penalty proposed in this complaint, **the Respondent must file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint.** The answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which Respondent has any knowledge. The answer should state (1) the circumstances or arguments which are alleged to constitute grounds of defense, (2) a concise statement of the facts which the Respondent intends to place at issue in the hearing, and (3) whether a hearing is requested. **Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of the allegation.**

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference **does not** extend the period for filing an answer and request for hearing as set out

above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. part 22.

If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. A request for a settlement conference, or any questions that Respondent may have regarding this complaint, should be directed to the attorney named below.

Dated this 14th day of June, 2006.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Complainant.

Michael T. Briner for
Carol Rushin

Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Margaret J. (Peggy) Livingston

Margaret J. ("Peggy") Livingston
Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466
Telephone Number: (303) 312-6858
Facsimile Number: (303) 312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent as follows:

Via CERTIFIED MAIL/RETURN RECEIPT REQUESTED to:

Brian Harris
Heart Six Guest Ranch
P.O. Box 70
Moran, WY 83013

Date: 6/14/2006

By: Judith McTernan
Judith McTernan

SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Support A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6991e, and 6992a), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under section 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647) under section 3008(a)(3) of the Resource Conservation and Recovery Act;

(6) The assessment of any administrative civil penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(e), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609) of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA") (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under section 1502 of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332-1502);

(10) The assessment of any administrative civil penalty under section 1502 of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332-1502);

(11) The assessment of any administrative civil penalty under section 1502 of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332-1502);

(b) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act;

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6991e, and 6992a), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under section 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647) under section 3008(a)(3) of the Resource Conservation and Recovery Act;

(6) The assessment of any administrative civil penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(e), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609) of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA") (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under section 1502 of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332-1502);

(10) The assessment of any administrative civil penalty under section 1502 of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332-1502);

(11) The assessment of any administrative civil penalty under section 1502 of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332-1502);

Support H—Supplemental Rules

22.33 [Reserved]

22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

22.36 [Reserved]

22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

22.40 [Reserved]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application. will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Support A—General

Sec. 22.1 Scope of this part.

22.2 Use of number and gender.

22.3 Definitions.

22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

22.5 Filing, service, and form of all filed documents; business confidentiality claims.

22.6 Filing and service of rulings, orders and decisions.

22.7 Computation and extension of time.

22.8 *Ex parte* discussion of proceeding.

22.9 Examination of documents filed.

Support B—Parties and Appearances

22.10 Appearances.

22.11 Intervention and non-party briefs.

22.12 Consolidation and severance.

Support C—Prehearing Procedures

22.13 Commencement of a proceeding.

22.14 Complaint.

22.15 Answer to the complaint.

22.16 Motions.

22.17 Default.

22.18 Quia timore Dei resolution; settlement; alternative dispute resolution.

22.19 Prehearing information exchange; prehearing conference; other discovery.

22.20 Accelerated decision; decision to dismiss.

Support D—Hearing Procedures

22.21 Assignment of Presiding Officer; scheduling the hearing.

22.22 Evidence.

22.23 Objections and offers of proof.

22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

22.25 Filing the transcript.

22.26 Proposed findings, conclusions, and order.

Support E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial decision.

22.28 Motion to reopen a hearing.

Support F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.

22.30 Appeal from or review of initial decision.

Support G—Final Order

22.31 Final order.

22.32 Motion to reconsider a final order.

22.33 [Reserved]

22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

22.36 [Reserved]

22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

22.40 [Reserved]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

22.46-22.49 [Reserved]

Support I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.

22.51 Presiding Officer.

22.52 Information exchange and discovery.

22.53 [Reserved]

22.54 [Reserved]

22.55 [Reserved]

22.56 [Reserved]

22.57 [Reserved]

22.58 [Reserved]

22.59 [Reserved]

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22.163 [Reserved]

22.164 [Reserved]

22.165 [Reserved]

22.166 [Reserved]

22.167 [Reserved]

22.168 [Reserved]

22.169 [Reserved]

22.170 [Reserved]

22.171 [Reserved]

22.172 [Reserved]

22.173 [Reserved]

22.174 [Reserved]

22.175 [Reserved]

22.176 [Reserved]

22.177 [Reserved]

22.178 [Reserved]

22.179 [Reserved]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

99 APR 29 PM 1:00

IN THE MATTER OF)

Mr. Brian Harris, Owner)
Heart Six Guest Ranch)
Moran, Wyoming)

Respondent)

Proceedings under §1414(g))
of the Safe Drinking Water)
Act, 42 U.S.C. §300g-3(g))

Docket No.)

FILED
EPA REGION VIII
PWS-VIII-98-55
HEARING CLERK

AMENDED
ADMINISTRATIVE ORDER

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by §1414(g) of the Safe Drinking Water Act, (the "Act"), 42 U.S.C. §300g-3(g) and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region VIII.

FINDINGS

1. Mr. Brian Harris, (Respondent) is an individual and therefore a "person" within the meaning of 40 CFR §141.2.
2. Respondent owns a system, the Heart Six Guest Ranch Water System (the "System"), located in Teton County, Wyoming for the provision to the public of piped water for human consumption.

3. The Heart Six Guest Ranch Water System has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of §1401(4) of the Act, 42 U.S.C. §300f(4), and a "transient, non-community water system" within the meaning of 40 CFR §141.2.
4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of §1401(5) of the Act, 42 U.S.C. §300f(5) and 40 CFR §141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. §300g et seq., and its implementing regulations, 40 CFR Part 141, which are also known as the National Primary Drinking Water Regulations (NPDWRs).
5. According to a October 23, 1998 sanitary survey conducted by an agent for EPA, Respondent owns a system that is supplied solely by a ground water source consisting of a well operating since 1994. The System serves approximately 40 persons per day year-round, and has 16 service connections.

FINDINGS OF VIOLATION

I.

1. 40 CFR §141.21(a)(3)(i) requires the owner and/or operator of a non-community public water system to monitor the System's water at least once per quarter to

determine compliance with the maximum contaminant level (MCL) for total coliform bacteria as stated in 40 CFR §141.63(a)(2).

2. Respondent failed to monitor its water for contamination by total coliform bacteria during the 1st quarter (January-March) 1995, 1996, 1997 and 1998; 2nd quarter (April-June) 1995 and 1998; 3rd quarter (July-September) 1994, 1995, 1996, 1997 and 1998; and 4th quarter (October-December) 1995, 1996, 1997 and 1998, in violation of 40 CFR §141.21(a)(3)(i).

II.

1. 40 CFR §141.23(d) requires all public water systems with a ground water source to monitor the System's water annually for nitrate to determine compliance with the nitrate MCL appearing in 40 CFR §141.62(b), beginning January 1, 1993.
2. Respondent failed to monitor the System's water for nitrate in 1995, 1997 and 1998, in violation of 40 CFR §141.23(d).

III.

1. 40 CFR §141.21(a) requires all public water system to collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan, subject to EPA review.

2. Respondent failed to submit to EPA a written sample siting plan for collecting total coliform samples, in violation of 40 CFR §141.21(a).

IV.

1. 40 CFR §141.21(g)(2) requires public water systems that have failed to comply with a coliform monitoring requirement under 40 CFR §141.21 to report the monitoring violation to EPA within ten (10) days after the system discovers the violation.
2. Respondent failed to report to EPA the coliform monitoring violations detailed in Sections I and III, in violation of 40 CFR §141.21(g)(2).

V.

1. 40 CFR §141.32 requires the owner and/or operator of a public water system to notify the public of any MCL, monitoring requirement, or treatment technique violation.
2. Respondent provided public notice for total coliform monitoring violations in 1995 and nitrate violations in 1995, but has not provided public notice for the other non-compliance detailed in the preceding Sections I, II, III and IV, in violation of 40 CFR §141.32.

VI.

1. 40 CFR §141.31(b) requires the owner and/or operator of a public water system to report any failure to comply

with any NPDWRs (40 CFR Part 141) to EPA within forty-eight (48) hours.

2. Respondent failed to report to EPA the non-compliance detailed in Sections II and IV, in violation of 40 CFR §141.31(b).

ORDER

Based on the foregoing findings, and pursuant to the authority of §1414(g) of the Act, IT IS ORDERED:

1. Within 30 days of the effective date of this Order, Respondent shall comply with the requirement of 40 CFR §141.21(a)(3)(i) to perform quarterly bacteriological monitoring. Respondent shall comply with the MCLs as stated in 40 CFR §141.63(a)(2). Respondent shall report analytical results to EPA within the first ten (10) days of the end of the monitoring period, as required by 40 CFR §141.31(a).
2. By May 30, 1999, Respondent shall comply with the nitrate monitoring requirements as stated in 40 CFR §141.23(d) to determine compliance with the nitrate MCL appearing at 40 CFR §141.62(b). Respondent shall report analytical results to EPA within the first ten (10) days following the month in which sample results are received (i.e., June 10, 1999), as required by 40 CFR §141.31(a).
3. By May 30, 1999, Respondent shall submit a sample siting plan to EPA for monitoring total coliform

bacteria in its public water system. The plan should include: (a) a small map of the distribution system; and (b) sampling locations, including areas close to pipe line dead ends, for each monitoring period that the system provides water to the public.

4. Upon the effective date of this Order, Respondent shall comply with 40 CFR §141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 CFR §141.21 to EPA within ten (10) days after the system discovers the violation.
5. Within 15 days of the effective date of this Order, Respondent shall provide a notice to the public of the violations specified under Findings of Violation in this Order, to return to compliance with 40 CFR §141.32. This notice shall be given by any one of the following methods, at the election of the Respondent:
 - (1) by publication in a daily or weekly newspaper of general circulation in the area served by the System,
 - (2) by hand delivery to each user of the System, or (3)by continuous posting in conspicuous places in the area served by the System. Posting must continue for as long as the violation exists, but in no event for fewer than ten days. If the initial notification was by newspaper or by hand delivery, then the Respondent shall provide repeat notices of failure to monitor by either hand delivery or mail delivery at least every

three months for as long as the violation exists.

Respondent shall submit a copy of the public notice to EPA within ten (10) days of completion of the public notice, as required by 40 CFR §141.31(d).

6. Except where a different reporting period is specified in paragraph 4 above, upon the effective date of this Order, Respondent shall comply with 40 CFR §141.31(b) by reporting any failure to comply with any National Primary Drinking Water Regulation (40 CFR Part 141) to EPA within 48 hours.
7. Reporting requirements specified in this Order shall be provided by certified mail to:

Eric Johnson
U.S. EPA Region VIII (8-ENF-T)
999 18th Street, Suite 500
Denver, Colorado 80202-2466

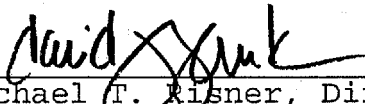
GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 CFR §141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forego any civil or any criminal action otherwise authorized under the Act.
2. Violation of any term of this Order may subject the Respondent to an administrative civil penalty of up to \$25,000 under §1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B) or a civil penalty of not more than \$27,500 per day of violation, assessed by the U.S.

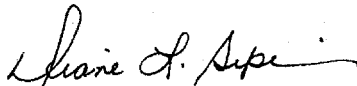
District Court, under §1414(g)(3)(A) and (C) of the Act, 42 U.S.C. §300g-3(g)(3)(A) and (C).

3. Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than \$27,500 per day of violation, assessed by an appropriate U.S. District Court, under §1414(g)(3)(A) and (C) of the Act, 42 U.S.C. §300g-3(g)(A) and (C).
4. The effective date of this Order shall be the date of issuance of this Order.

Issued this _____ day of APR 29 1999, 1999.



Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice



Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

JUL 27 1999



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

COMPLAINANT'S
EXHIBIT NO. 3

JUL 27 1999

Ref: 8-ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Heart Six Guest Ranch
c/o Brian Harris
15015 Florida Blvd.
Baton Rouge, LA 70819

Re: Violation of Administrative Order
Docket No. PWS-VIII-98-55
PWS ID# WY5600502N

Dear Mr. Harris:

On April 29, 1999, the U.S. Environmental Protection Agency (EPA) issued to you an Amended Administrative Order, Docket No. PWS-VIII-98-55, ordering your compliance with the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f et seq., and its implementing regulations, the National Primary Drinking Water Regulations (NPDWRs), 40 CFR Part 141.

Our records indicate that you are in violation of the Amended Administrative Order. The Order requires the Heart Six Guest Ranch to:

1. Comply with the requirements of 40 CFR §141.21(a) by providing to EPA a written sample siting plan to collect total coliform samples at sites which are representative of water throughout the distribution system. EPA has not received a copy the sample siting plan, which was due to EPA by May 30, 1999.
2. Comply with the requirements of 40 CFR §141.32 to provide a notice to the public of violations of the requirements of 40 CFR §141.1 et seq., or the Safe Drinking Water Act. EPA has not received a copy of the Heart Six Guest Ranch's public notice for its failure to monitor for nitrate in 1997 and 1998; failure to monitor for total coliform bacteria during the 1st quarter (January-March) 1996 and 1997; 2nd quarter (April-June) 1998; 3rd quarter (July-September) 1994, 1996, 1997 and 1998; and 4th quarter (October-December) 1996 and 1997. A copy of the public notice was due to EPA by May 14, 1999.



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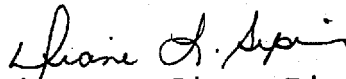
You must take immediate action by provision of the sample siting plan and public notices to return your system to compliance with the NPDWRs, 40 CFR Part 141, and Amended Administrative Order, Docket No. PWS-VIII-98-55. EPA is considering additional enforcement action as a result of your non-compliance with the Order. Violating an Administrative Order may lead to (1) a penalty of up to \$27,500 per day per violation of the Order, and/or (2) a court injunction ordering you to comply.

If you have any questions or wish to have an informal conference with EPA, you may contact Michelle Marcu at (303) 312-6921, or at the following address:

Michelle Marcu
Enforcement Attorney
U.S. EPA, Region VIII (8-ENF-L)
999 18th Street, Suite 500
Denver, Colorado 80202-2466

We urge your prompt attention to this matter.

Sincerely,


Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: M. Marcu, EPA



COMPLAINANT'S
EXHIBIT NO. 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

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FILED
EPA REGION VIII
HEARING CLERK

DEC 21 2004

Ref: ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Heart Six Guest Ranch
c/o Brian Harris
15015 Florida Blvd.
Baton Rouge, LA 70819

Re: Violation of Administrative Order
Docket No. PWS-VIII-98-55
PWS ID# WY5600502

Dear Mr. Harris:

On April 29, 1999, the U.S. Environmental Protection Agency (EPA) issued to you an Amended Administrative Order (Order), Docket No. PWS-VIII-98-55, ordering your compliance with the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f et seq., and its implementing regulations, the National Primary Drinking Water Regulations (NPDWRs), 40 C.F.R. Part 141.

This is the second Administrative Order violation letter issued to Heart Six Guest Ranch. As the owner of the public water system, it is your responsibility to ensure that the Heart Six Guest Ranch is providing safe drinking water to your customers and employees. As the Respondent to whom the Order was issued, you are the sole party liable for any penalties, up to \$32,500 per day per violation, assessed for violation(s) of the Order.

Our records indicate that you are in violation of the Order. The Order requires the Heart Six Guest Ranch to:

1. Comply with the requirements of 40 C.F.R § 141.21 by performing quarterly bacteriological monitoring. EPA has not received bacteriological monitoring results for the following monitoring periods: 3rd quarter (July-September) 1999, 1st quarter (January-March) and 3rd quarter (July-September) 2000, 1st quarter (January-March) 2001, and 2nd quarter (April-June) 2002.

2. Report analytical results to EPA within the first ten days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a). EPA received the following monitoring results on February 26, 2003, more than ten days after the end of the monitoring periods: 2002 annual nitrate, and bacteriological results for 2nd quarter (April-June) 1999, 4th quarter (October-December) 2000, and 3rd quarter (July-September) 2002.
3. Comply with the requirements of 40 C.F.R. § 141.21(g)(2) by reporting any failure to comply with bacteriological monitoring requirements within ten days after discovery of the violation. EPA was not notified of the violations identified above.

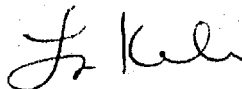
Based on your history of non-compliance with the NPDWRs, EPA is not considering closing the Order at this time. You must continue to comply with the NPDWRs, 40 C.F.R. Part 141, and Amended Administrative Order, Docket No. PWS-VIII-98-55. EPA is considering additional enforcement action as a result of your non-compliance with the Order. Violating an Administrative Order may lead to (1) a penalty of up to \$32,500 per day per violation of the Order, and/or (2) a court injunction ordering you to comply.

If you have any questions or wish to have an informal conference with EPA, you may contact Michelle Marcu at (303) 312-6921, or at the following address:

Michelle Marcu
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, Colorado 80202-2466

We urge your prompt attention to this matter.

Sincerely,



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

cc: Ray McCoy, manager of Heart Six Guest Ranch
Larry Robinson, WY DEQ (via e-mail)
Dr. Brent Sherard, WY DOH (via e-mail)
Dr. Tracy Murphy, WY DOH (via e-mail)
Dr. David Barber, WY DOH (via e-mail)

